

Informal Opinion #2000-3

June 16, 2000

Gerry F. Longway
Clerk
Town of Fairfield
P.O. Box 5
Fairfield, VT 05455

Dear Ms. Longway:

This letter is in response to your inquiry, dated June 14, 2000, regarding your obligation as a town clerk to issue civil union licenses and the potential consequences if you fail to issue these licenses.

As your letter appears to acknowledge, as a town clerk you are obligated by law to issue a civil union license to any applicant who meets the legal requirements for obtaining such a license. This obligation is established by Section 5 of Act 91, An Act Relating to Civil Unions, which states in relevant part: "Upon application in a form prescribed by the department, a town clerk shall issue a civil union license in the form prescribed by the department, and shall enter thereon the names of the parties to the proposed civil union, fill out the form as far as practicable and retain a copy in the clerk's office." (Emphasis added.)

You have asked whether you or your town would be subject to any fines or penalties for failure to issue civil union licenses. A person who is wrongfully denied a civil union license would be able to pursue legal action against you and/or the town. Rule 75 of the Vermont Rules of Civil Procedure permits judicial review, in superior court, of "[a]ny action or failure or refusal to act by an agency of the state or a political subdivision thereof, including any department, board, commission, or officer" A person wrongfully denied a civil union license could use this Rule to seek a court order requiring issuance of the license.

Wrongful denial of a civil union license may also violate Vermont's public accommodations law, 9 V.S.A. §§ 4500--4507, which, among other things, bars discrimination on the basis of sex or sexual orientation in places of public accommodation. A person wrongfully denied a civil union license could bring an action

under 9 V.S.A. § 4506(a) against you or the town seeking injunctive relief as well as compensatory and punitive damages. If successful, the person could also receive an award of costs and attorney's fees.

There may be other remedies available to a person who is wrongfully denied a civil union license. For example, such persons may petition this office to file a court action seeking an injunction to compel compliance with state law. In addition, the Human Rights Commission could be asked to initiate an enforcement action under our public accommodations law.

You also asked about potential criminal liability. Depending on the circumstances of a specific case, the unlawful failure to issue a civil unions license could be considered a violation of either 13 V.S.A. § 3006 or 9 V.S.A. § 4507. These are offenses that carry potential sanctions of a fine up to \$1000 or imprisonment for up to one year. However, we are aware of no one in the prosecutors' community to date who has suggested using the criminal process to address these issues. As a practical matter, the civil remedies are the ones that deserve your closest attention.

Recent news reports indicate that some town clerks will resign because of personal or moral objections to the civil unions statute. It is, of course, well within their rights to do so. It is our sincere hope, however, that as of July 1 the town clerks will adhere to their obligations under this new law, as well as their many other statutory duties.

I have enclosed copies of the statutes discussed above. I hope this letter is responsive to your concerns.

Sincerely,

BRIDGET C. ASAY
Assistant Attorney General

Encs.

cc: Deborah L. Markowitz, Secretary of State